



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.2385 of 2025

Reserved on: 06.10.2025

Decided on: 14.10.2025

Pushpa Devi

..... Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner: Ms Suman Thakur, Advocate.

For the Respondent/State: Mr Jitender K. Sharma, Additional Advocate General.

For the complainant: Mr Ankush Dass Sood, Senior Advocate, with Mr R.R. Rahi, Advocate.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking pre-arrest bail in F.I.R. No. 90/2025, dated 20.09.2025, registered at Police Station, Chirgaon, District Shimla, H.P., for the commission of offences punishable under Sections 107, 127(2) and 115(2) read with Section 3 (5) of Bhartiya Nyaya Sanhita, 2023 (BNS).

¹ *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

2. The police filed the status report asserting that Sections 3(2) (v) and 3(2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (SC & ST Act) were also added after the registration of F.I.R.

3. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that Section 438 of Cr. P.C. is excluded by Section 18 of the SC & ST Act, and the present petition for seeking pre-arrest bail is not maintainable. Hence, he prayed that the present petition be dismissed.

4. Ms Suman Thakur, learned counsel for the petitioner, submitted that the Court can grant the pre-arrest bail when it is satisfied that no case for the commission of an offence punishable under the SC & ST Act is made out. She relied upon the judgment of the Hon'ble Supreme Court in *Prathvi Raj Chauhan v. Union of India, (2020) 4 SCC 727*, in support of this submission.

5. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

6. The status report shows that the F.I.R. was initially registered under various provisions of BNS. The police conducted an investigation and found that the deceased

Sikander belonged to the scheduled caste community (koli), whereas the accused Pushpa Devi does not belong to the scheduled caste community. The deceased was aged 11 years and 10 months, whereas the accused is aged 50 years. The accused demanded a goat from the deceased for the purification of her house. This fact was corroborated by the statements of Kumari Manju, Suresh Kumar and Sarojini Devi. The accused also gave an interview to a local news media channel on 1st October, 2025 in which she admitted that she had confined the deceased inside her cowshed and stated that she would not release him until the goat was given to her. Chain Ram, Kardar made a statement about the caste prejudices prevalent against members of the scheduled caste, like 'koli' and who are treated as untouchable and not allowed to enter the house. The F.I.R. also mentions that the deceased had disclosed to his mother that the accused and 2-3 women had beaten and confined the deceased to the cowshed. The accused was saying that the deceased had touched her house, and she would not release him unless the goat was given to her.

7. The allegations in the status report show that the accused had confined the deceased in the cowshed and given him beatings because he had touched her house. She asked for a

sacrificial goat to purify her house. The accused and the deceased belonged to the same village, and as per Section 8(c) of the SC & ST Act, there is a presumption that the accused was aware of the caste of the deceased. Beating and threatening a person are *prima facie* punishable under Sections 323 and 506 of the IPC, which have been mentioned in Section 3(2)(va). Since the beatings were given because the deceased had touched the house of the accused, which he was not entitled to do because of his caste, *prima facie*, the offence was committed because of the caste of the deceased.

8. It was laid down by the Hon'ble Supreme Court in *Prathvi Raj Chauhan v. Union of India, (2020) 4 SCC 727: (2020) 2 SCC (Cri) 657: 2020 SCC OnLine SC 159* that the provisions of Section 438 of Cr. P.C. regarding the pre-arrest bail does not apply to a person accused of committing an offence punishable under the SC & ST Act. However, the Court can release the person on pre-arrest bail if the Court is satisfied that no offence is *prima facie* made out. It was observed at page 751:-

“11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not

apply. We have clarified this aspect while deciding the review petitions.”

9. This position was reiterated in *Kiran v. Rajkumar Jivraj Jain, 2025 SCC OnLine SC 1886*, wherein it was observed as under: -

“5.2. It is evident from the above provision of Section 18 that it expressly excludes the applicability of Section 438 of the Criminal Procedure Code, 1973 (“hereinafter referred to as “the Cr. P.C”). In other words, in relation to any case involving the arrest of a person who is facing the accusation of committing an offence under this Act, protection of Section 438, Cr. P.C. would not be available. The Legislature has taken away the benefit of anticipatory bail in respect of the arrest for the offences alleged under the SC/ST Act. The bar in Section 18 of the SC/ST Act would operate.

5.3. While upholding the Constitutional validity of Section 18 of the Act, this Court in *State of M.P. v. Ram Krishna Balothia (1995) 3 SCC 221* observed as under,

“... The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with the abolition of ‘untouchability’ and forbids its practice in any form. It also provides that the enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of ‘untouchability’.” (Para 6)

5.3.1. The court proceeded to observe,

“The exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the contest of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent

or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences” (para 6)

5.4. The aforesaid bar is held to be not violative of Article 21 of the Constitution. In *Kartar Singh v. State of Punjab (1994) 3 SCC 569*, it was stated that taking away the right of pre-arrest bail under Section 438 of the Cr. P.C., under Section 18 of the SC/ST Act, would not infringe the right to personal liberty.

5.5. In *Vilas Pandurang Pawar v. State of Maharashtra (2012) 8 SCC 795*, this Court explained the bar under Section 18 of the SC/ST Act against the grant of anticipatory bail in the following words,

“Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with a caste name, the accused persons are not entitled to anticipatory bail.” (Para 9)

5.5.1. It was further stated in *Vilas Pandurang Pawar* (supra), “Moreover, while considering the application for bail, the scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in a critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the

provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.” (Para 10)

5.6. A three-judge bench of this Court in *Prathvi Raj Chauhan* (supra) expressed itself thus,

“... exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act.” (Para 6)

5.6.1. This Court emphasised in *Prithvi Raj Chauhan* (supra) that anticipatory bail cannot be granted as a matter of right. It was stated that bail is essentially a statutory right and cannot be said to be an essential ingredient of Article 21 of the Constitution. It was further observed that if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

5.7. The aforesaid provision of Section 18 and the bar created thereunder have to be seen in the context of the object and purpose with which the Parliament enacted the SC/SC Act, 1989. This legislation was brought into force with an avowed object of implementing the measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, who have remained a vulnerable class in society. The underlying idea is to ensure that the persons belonging to these classes are not denied their civil rights, are not subjected to indignities and are insulated from humiliation and harassment.

5.7.1. The provisions of Section 18, in their ultimate analysis, further the very object of the enactment. Seemingly a stricter provision, it underscores the

Constitutional idea of availing social justice and ensuring the same pedestal for the Scheduled Caste and Scheduled Tribe community people as other classes in the society.

5.8. The decision of this Court in *Shajan Skaria* (supra) sought to be pressed into service on behalf of respondent No. 1 takes no different view. In that case, the Bench of two Judges of this Court elaborated the law in respect of grant of anticipatory bail, then highlighted and recognised the bar created under Section 18 of the SC/ST Act to observe that only in the cases where the offence could not be said to have been made out on a very *prima facie* consideration, the court may exercise the discretion to grant pre-arrest bail to the accused.

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6. In light of the parameters in relation to the applicability of Section 18 of the Act emanating from the afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes Act, 1989, with express language excludes the applicability of Section 438, Cr. P.C., it creates a bar against the grant of anticipatory bail in absolute terms in relation to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off.

6.1. The absolute nature of bar, however, could be read and has to be applied with a rider. In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of *prima facie* merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.

6.2. Non-making of a *prima facie* case about the commission of an offence is perceived to be such a situation where the Court can arrive at such a conclusion at the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive

in this regard. Furthermore, in reaching a conclusion as to whether a *prima facie* offence is made out or not, it would not be permissible for the Court to travel into the evidentiary realm or to consider other materials, nor could the Court advert to conduct a mini-trial.

10. In the present case, a *prima facie* reading of the status report and F.I.R. shows that the accused had given beatings to the deceased (a member of the scheduled caste) and confined him to the cowshed because the deceased happened to touch the house of the accused, and she wanted a sacrificial goat for purification. Hence, the offence was committed because of the caste of the deceased and would not have been committed had the deceased not been a member of the scheduled caste. Therefore, it is not possible to conclude, at this stage, that the petitioner has not, *prima facie*, committed an offence punishable under Section 3(2) (va) of the SC & ST Act.

11. Consequently, the objection taken by Mr Jitender Sharma, learned Additional Advocate General, has to be upheld that the present petition for pre-arrest bail is not maintainable in view of the bar contained in Section 18 of the SC & ST Act. Hence, the present petition is dismissed as not maintainable.

12. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing, whatsoever, on the merits of the case.

13. The present petition stands disposed of and so are the miscellaneous petitions if any.

(Rakesh Kainthla)
Judge

14 October, 2025.
(yogesh)

High Court of HP